

CLEAN WATER COUNCIL
Meeting Highlights
June 17, 2003

Location:

NJ Environmental Infrastructure Trust, Building 6, Suite 201, 3131 Princeton Pike,
Lawrenceville, NJ.

Attendees:

Pat Matarazzo, Kerry Kirk Pflugh, Russell Furnari, Ferdows Ali, Amy Goldsmith, Todd Kratzer, Dan VanAbs, Pat Pittore, Marybeth Koza, Helen Heinrich, Ray Zabihach, Tony McCracken, Diane Alexander, James Cosgrove, Jr., Carmen Valentin, Barbara Hirst, Larry Baier, Fred Sickels and Ursula Montis.

Introductions were made all around as there was a new member who joined us today. The new member is Carmen Valentin, from the office of Smart Growth, who is replacing Barry Sullivan from Community Affairs.

Kerry commented that copies of the Statewide Water Quality Management Plan will be passed out to all members. Larry Baier will be speaking to us today on the new rule proposal for Watershed, Barbara Hirst will speak to us on the TMDL Program and Fred Sickels is here to answer the many questions we asked about Water Allocation permitting. After looking at the Statewide WQM Plan and hearing what these speakers have to say today, we may have a better idea of a specific direction for this Council to take. Because of our full agenda today, I suggest we make our July meeting a workshop meeting and come up with a scope out a good direction for this Council. We can then run this past Larry and the Commissioner and see if it is consistent with the mission of the Department.

Joint Clean Air Council Meeting in October- Agenda items suggested:

- Pat Matarazzo – MTBE issues, air deposition component
- Diane Alexander – Mercury
- Russ Furnari – PCB's
- Pat Matarazzo – Wildlife Criteria (air deposition concentrations)
- Pat Matarazzo – USGS – non regulated compounds

Pat Matarazzo – commented that after reading the response to comment package on C 1 regulations, he felt that for the first time, we have a very clear definition of existing water quality. One of the questions that we as dischargers asked was where did antidegradation kick into our process? It kicks into our process at design capacity. This is the first time that they have actually explained what they mean by existing water quality as it relates to a discharger's flow.

Helen Heinrich - What was the date of that comment package?

Pat Matarazzo – May 19th, in the NJ Register

Todd Kratzer – DRBC has a definition for existing water quality which the State uses. We are currently reevaluating this information. There are two components of it: one defines existing water quality; the second is how you allocate and assess the changes in water quality.

Pat Matarazzo – at the EPA Regional II annual meeting, despite to the contrary in the past, they are now pushing nutrient trading. EPA is now looking for processes around the regions where trading will work. Moving in this direction will be a good change for us.

Kerry –(introducing Larry Baier, Director of Watershed Mgmt.) There were questions asked at the last meeting about the status of the Watershed Program relative to the Rules. Also, there were questions as to the relationship of the Rules to the Big Map proposal and how they currently fit in.

Larry – We are looking at a rewrite of the Water Quality Management Planning rules in an attempt to implement the Big Map. One of the reasons the WQMP rules makes sense for the implementation of the Big Map is because it cuts across all the Department's permitting programs. In that our statutory authority basically says that the Department is not supposed to issue any approvals that are inconsistent with the Statewide Water Quality Management Plan or the area wide Water Quality Management Plan. So if we adopt the Big Map and Rules as part of Statewide Water Quality Management Plan, then we have instant applicability through the Department's permitting programs. To require a Department permit they would have to be consistent with the Big Map. The Commissioner's charge to the Division has been for the environmentally sensitive areas. What used to be red light areas are now environmentally sensitive areas, yellow light areas are the fringe areas, and green light areas are smart growth areas. The Commissioner's charge to the Division was to come up with very clear standards by which applicants and applications can judge their consistency with the Big Map. And particularly in the environmentally sensitive areas, the Commissioner's charge was to come up with a density of development that would be allowable and would be protective of the state's water resources. We looked at a 3-legged stool with Water Supply being one leg, Nitrate dilution and groundwater quality being the second leg, and non point source pollution being the third leg. Based on research done, impervious cover seemed to be a pretty good driver for non point pollution. A lot of literature indicates that at a 10% impervious cover we start seeing impacts with regard to the biological integrity of our streams, both here and other places in the country. One of the things we are looking at, is to limit the extension of sewer service in the environmentally sensitive areas. Essentially, sewer service will be available for smart growth, meaning cluster development, probably some sort of COAH. Most of the development in these environmentally sensitive areas will be on well and septic. That is why the nitrate number becomes important. The variability in groundwater recharge rates around the State are going to drive the water supply and nitrate dilution parts. We would like to come up with one density to cover the State, so we are looking at gross averaging. That will be difficult because it has its own

sets of limitations. Looking at the environmentally sensitive areas, the one thing that seems to hold true, is that the percent of impervious cover wants to be the limiting factor for setting an overall density almost everywhere. We are now thinking of a 3% impervious cover and allow a threshold. That may protect the 10% threshold that we do not want to get above in the environmentally sensitive watersheds.

Pat Matarazzo – One of the things CWC asked the State to look at was unused allocations from the water supply side. Another was on the wastewater side. Several small plants could be converted from surface water discharge to groundwater discharge as a recharge unit.

Larry – In terms of water allocation, it's possible in the environmentally sensitive areas that we limit where we supply public waters and public water supply systems, for instance, to smart growth centers, cluster developments, environmentally sensitive areas public projects and things of that nature. Whatever allocation is unused will either remain unused or the State will withdraw it and you will have water passed downstream for other users.

Ray Zabihach – I have a question on the 10% impervious cover. If the stormwater rules are adopted and all new development in the sensitive areas get put into place and with a variety of BMP's and 100% infiltration, will that change the 10% impervious cover. Would it not go up?

Larry – I assume you are referring to the hydro modification analyses and recharge of the two year storm. Certainly, the intent there was to eliminate impacts on the receiving water. Time will tell whether or not we are successful. Engineering solutions tend to fail over time.

Ray Z. – If the results of the BMP's put in improve water quality, will we be stuck with the 10% impervious cover? If you are going to cluster, you are going to create a lot of nonpoint source pollution, so those BMP's better work! Our goal is to improve water quality, not to impose a 10% restriction. You will have to be more flexible.

Larry – I'm not settled on that number yet. The environmentally sensitive areas aren't based solely on the water quality parameter, a lot are based on the Landscape Act (T & E, habitat) so there is a need to still protect the resources in that habitat, even though we may manage to improve the water quality. Secondly, the Commissioner wants to make the process predictable, so that people would know what to expect.

Marybeth Koza – I recommend that we should have the ability to do site specific analyses for development similar to EQ109, based on a subwatershed. Some of those studies would help the process. The other important issue is the use of Beneficial Reuse. We heard that loud and clear at our Public Hearing.

Larry – I like that recommendation. The difficulty with wastewater reuse is the variability around the State. Clearly, on a coastal plain it makes sense, but not in the

northern area. It's just not cost competitive. Part of the issue we are working with now, is how to try and make it more cost competitive and convince people to accept it. Right now water is too cheap.

Dan VanAbs – I'm not sure a single number statewide is going to do more than damage cold water areas because you are protecting warm water areas. I've read that there is no impervious threshold. There is a range around an average that seems to indicate an impact. If you set 10% impervious cover, I suspect over a period of time, you will lose a good number of your trout production streams.

Ray Z. – Maybe the area of delineation should be watersheds. Each watershed has a unique footprint and unique characteristics. If you use watershed as the defining level on how you apply these various factors, it would make a lot more sense.

Larry – We made that point to the Commissioner already but were unsuccessful. I agree with your 10% comment on impervious. There is no right number. It's very gray.

Ray Z. – Let the circumstances dictate what needs to be put in, through the sampling, the science, etc. Impervious is a water quality issue. The conditions that exist should dictate what that impervious level should be. Make sure it's flexible. We had a County Planners meeting and discussed the cross-acceptance process. It's on the way.

Larry – Doing that analyses on a site by site basis does not necessarily get you a watershed average. To me this plan endorsement, cross-acceptance type process feels like the right way to do it. At least I'm looking at it regionally and am not involved in a site by site argument over what the standard should be.

Marybeth – do site by site analyses on a larger site, say 100 acres or more.

Dan VanAbs – Good point. Make it stringent enough for those who feel a need for a better answer and are willing to put the money forward, but not so stringent that their first reaction is to go to court.

Tony McCracken – We need to look at that variability and look at the real science. One kind of standard will take us into court.

Helen Heinrich – At a conference I attended, EPA seemed to be interested in pushing on-site wastewater treatment. Will DEP put out new rules to encourage that kind of thing?

Larry – I'm not sure. In terms of the WQMP rule, we will only allow package plants for things that qualify as cluster development.

Pat M. – DEP needs to look at the California Plan on Beneficial Reuse.

Larry – They needed to look at water reuse because water was very high in cost. Other reasons drove them to do reuse. We need to be more cost competitive here.

Larry concluded his presentation and commented that he would work Marybeth's suggestion on site specific analyses for development into his presentation with the Commissioner.

Kerry – We would like you to consider the role of the CWC as it relates to helping you develop rules and response to issues. The CWC would like to be more involved in major initiatives, beyond their annual Public Hearing. We would like to know how to integrate with you more effectively and efficiently.

Larry – I will be glad to take any suggestions.

Pat introduced Barbara Hirst, Manager of TMDL for the State of NJ. (Please see attached presentation) Question and answer period followed:

Helen Heinrich – The Agriculture Farm community is concerned about the phosphorus and fecal coliform coming from the towns. Are you going to let the towns take this level of information and enforce them upon everyone in their jurisdiction, or will you hold them back and wait for a more definitive reading?

Barbara – Phase II Stormwater rule has a provision that if a TMDL is adopted and says things need to be done in order to meet water quality standards, that would become part of the stormwater permit for that municipality. There is nothing about these TMDL's that will force the municipality to do anything other than what is normally required to do under the Stormwater Phase II Program. We fully expect those measures dealing with pet waste, cleaning out stormwater outlets, street sweeping and wildlife (geese) will go a long way in addressing fecal coliform. We need to get our watershed partners to help us deal with goose related problems. It is a big problem. When we get into the implementation stages and we are not showing the results we need, then there might be more detailed implementation activities required.

Helen H. – We are more concerned about the 90% reduction in phosphorous. There is no specific information on this.

Barbara – These TMDL's as regard to phosphorous, intend that the more detailed characterization studies will occur before we come up with the scenarios for actual reductions in different geese.

Pat M. – The phosphorous in the stormwater regulations is a narrative standard, while our normal instream surface water quality standard is a numerical. We need to have that jive! It should be the same on both sides.

Barbara – I am aware of that, but do not have an answer for you.

Ferdows Ali – I'm bringing up the goose problem again. Even if the farmers implement the BMP's, the problem will still be there. It is difficult to get cooperation to solve this problem.

Barbara – The problem is the public's perception of the geese, they think they are cute. We need to reduce the population in NJ by half. However, we need community support. It would take years for geese population to go down. We have 319 money to deal with the habitat modification. We are hoping our watershed partners will help us in getting the community's support. In big problem areas, the best thing would be to do an immediate numbers reduction and then follow through with a habitat modification and nest destruction.

Pat M. – EPA has rescinded it's own TMDL. It's in the process of now reissuing a new TMDL protocol. The two main points being stressed out of Washington strongly suggests that they reevaluate their designated uses and that they consider doing a use attainability analyses up front of the TMDL implementation process. Will you be incorporating these into any of the protocols that you are developing for TMDL's now?

Barbara – No not yet. The standards that are common in many states are not necessarily the right numbers to achieve the intended purpose. As we approach a situation where the fecal loads are by in large not human in source, we should revisit those standards.

Pat Matarazzo introduced Fred Sickels, Chief of the Bureau of Water Allocations for the State of NJ. Fred announced that there was a new administrator to Water Supply, Michele Putnam. He felt she was an excellent choice and they would work well together. Fred would answer the following questions raised by the CWC:

1. How long does it take to get a water allocation permit?

Answer: About 15 months for a normal permit. Those that have hearing requests associated with them, because you have to review transcripts, would take another 6-7 months longer. I would like to see us get new permits and permit modifications out in 8 months.

2. How many permits are pending?

Answer: As of last week there were 175 in house to be processed. About 125 of these would be considered backlogged.

3. What is the cause of the delay?

Answer: The Permit Extension Act did not help. All 750 permits came up at the same time putting the program staff in a bind. There was also not much of a push to have actual workplans and time lines for permit reviewers. I have now instituted workplans whereas there is an expected draft report due in a certain month. If there is a problem, the reviewer either solves it himself, or if it is a policy issue, comes to me with it.

Sometimes the permit application gets dated and things might have changed and sometimes rules have changed. I go over the list of permits with the reviewer at least once every quarter. We also had a staffing problem. We were short staffed because of retirees, etc. We are also now trying to stagger permits.

4. Is there a greater permit backlog in one geographic area versus another?

Answer: Frankly none of them are significant. Two areas with the most backlogged permits are Gloucester Co. and Ocean Co. Probably, the reason being that they are big growth areas. Another point of interest is that Cape May has the Gibson Bill. This Bill will not allow them to allocate any water in Cape May Co. until a study has been completed. We can issue some permits if we show it does not accelerate saltwater intrusion and there are no ecological impacts. The backlog is fairly spread out except for Union and Warren Co., who have zero backlog.

5. Who is the public contact for water allocation permit issues?

Answer: I guess that would be me. I can be reached at 609-292-2957.

6. Are permits being written to include an enforcement component?

Answer: There are conditions in the permit. Nothing has really changed except that there are criteria and standards that you have to meet. We have not changed any of the enforcement language. There is an increased focus on enforcement. We need to have a stronger presence. People that are doing things right should be protected by enforcement.

7. What is the breakdown of the type of permit e.g. residential, golf course, industrial, commercial? Can we get this info on NJEMS? Can the public access this?

Answer: The breakdown of permits out of 750 of them are: 353-public supplies; 128 – golf courses. All others are spread out in lower numbers.

Helen H. – How about Agriculture?

Fred – Agriculture gets Agricultural Certification, not Water Allocation. There are about 1500 Agriculture Certifications. Even though it's a large number, Agriculture uses only about 2-5% of the water allocated.

8. Are there new rules or a new process that is contributing to the delay of allocations?

Answer: No new rules currently. We do see some direct connection with diversions in certain parts of the State with the ability for a wetlands to remain viable. No new rule but it's something we are looking at. I'm working more closely with Land Use Regulation, who regulate wetlands and streams in the State and Coastal region.

9. A question arose about a golf course named Deerwood Country Club, in West Hampton, about two miles from a wastewater treatment plant. Would there be

opportunity for reuse there and who coordinates or proposes beneficial reuse on these types of applications?

Answer: That golf course has been in operation since 1994. We are working with Watershed Management, (Gibson study) and we are trying to incorporate a lot of their issues into our permitting process, so that when we issue a permit it does fit into a bigger picture. As far as reuse, I think, long term, it will be good for the State. We are looking into whether some of the golf courses have opportunity for reuse and are near treatment plants or a main line. If there is an unused portion of water, and no projected future need for it, we can certainly pull back some of that allocated water upon renewal. I would really like to read the California Plan on reuse you were previously talking about. I need to look at an economic analyses.

Kerry – We have a copy of that. Ursula will get it to you.

Dan VanAbs – There are still, in NJ, opportunities for structural water conservation. We could do a lot in improving our water supply situation by knocking down our summertime peaks, which are primarily lawn irrigation. Water conservation, unlike reuse, is almost routinely cost effective and that is a critical issue. In terms of reuse, I think the Florida program is the closest to where NJ is going to be. They made reuse cost effective by simply eliminating the other options. They declared certain areas as water supply critical areas. That put people right up against it so that they had to deal with reuse and they did.

Fred – You have to think of what incentives you will need to make it attractive.

Amy Goldsmith – Are you able to take conservation or certain drought condition restrictions or beneficial reuse and write them into the permits, or just be more aggressive about them?

Fred – I agree that we can be more aggressive. We are doing some things now. We are looking at unaccounted for use. More metering, so users are paying for what they actually use. I don't see why we can't put more specific conservation methods in the permits and that is something that is cost effective.

Kerry – We have finally received the transcript from our annual Public Hearing which was on Beneficial Reuse this year. After a subcommittee conference call with Pam Goodwin, Marybeth Koza and myself, to discuss the transcript and comments, Marybeth put together a summary of the comments and concluded with the theme of the comments and suggestions of next steps. Please take a look at that summary.

Action Item:

Marybeth – Pam, Kerry and I thought because there was such a diverse group that supported reuse, and because we are such a diverse group, the next step would be to come up with 2-3 key points in relationship to the theme. We would then comment on these and actually submit that package to the Commissioner in support of this process. We would like to divide the themes into two or three groups and develop some specific recommendations using the transcript, written comments as well as technical expertise.

Kerry – We will forward this summary to all CWC members with recommendations on how to proceed. They can then come to the July 8th prepared and decided upon what issue they want to take on. Marybeth is proposing that, rather than the Council send a letter out, we would take issues and come up with concrete recommendations of what the program would look like, what the subject would be, who the people involved would be, etc. Another item of interest – I went to a Water Supply Advisory Council meeting last week and they are very interested in working with us to develop joint recommendations. So I will be forwarding the summary, as well as the transcript and written comments received, to the Chairman. They will work with us on putting together a comprehensive package for the Commissioner.

Meeting was then adjourned.